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Supreme Court, U.S.
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No. 91-1420

In The
Supreme Court of the United States
October Term, 1991

JOAN GROWE, SECRETARY OF STATE OF THE STATE OF MINNESOTA, ET AL.,
Appellants,

vs.

JAMES EMISON, ET AL.,
Appellees.

Appeal from the United States District Court for the District of Minnesota

OBJECTION OF APPELLEES TO MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

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OBJECTION TO MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF

Certain United States congressmen and state legislators and officials have filed with this Court a motion seeking leave to file a brief of amici curiae in this matter.[1] Appellees have withheld consent under Supreme Court Rule 37 to the filing of this brief because the proposed brief addresses only questions of law that have been and will continue to be presented by the parties. Appellees object on the same ground to a motion for leave to file such an amicus brief. See Supr. Ct. R. 37.4.

ARGUMENT

The Supreme Court Rules proscribe filing of amicus curiae briefs that raise issues already brought to the Court's attention by the parties. See Supr. Ct. R. 37.1, 37.4. Further, Rule 37 states, "A motion for leave to file a brief amicus curiae when consent has been refused is not favored." Supr. Ct. R. 37.2. Despite the clear rules disfavoring submission of such duplicative briefs, particularly where consent has been refused, amici propose filing a brief that is merely duplicative of issues already raised and discussed by appellants. Cf. Amici Brief at 5-14 with Brief of Appellants at i, 14-29.

Amici suggest four justifications in support of the proposition that their brief is supplementary and not duplicative. See Motion for Leave. First, amici note the "long history" of state court involvement in adjudicating redistricting disputes, and they

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[1]The proposed brief of amici will hereinafter be referred to as "Amici Brief." The motion for leave to file the Amici Brief will hereinafter be referred to as "Motion for Leave."

cite state constitutions that provide defined state court roles in the redistricting process. However, the constitutional provisions noted by amici are all either unique establishments of a specific role for specific state courts, making the provisions irrelevant to Minnesota,[2] or they recite principles of state court jurisdiction that have already been argued by appellants.[3] See White v. Weiser, 412 U.S. 783, 794-95 (1973); Scott v. Germano, 381 U.S. 407, 409 (1965).

This Court has previously recognized that redistricting is a task assigned not to an entity but to a process that is established under the laws of the individual state. See Smiley v. Holm, 285 U.S. 355, 365-73 (1931); see also Duxbury v. Donovan, 272 Minn. 424, 432-44, 138 N.W.2d 692, 697-98 (1965). All courts must defer in the first instance to a state's redistricting process. See Weiser, 412 U.S. at 794-95; see also Smiley, 285 U.S. at 365-73 (redistricting is performed according to legislative process and, in Minnesota, is accomplished through legislative and executive action). If a state constitution establishes a unique state court role in the redistricting process, unique considerations exist.

If a state constitution contains no provision establishing a defined role for a state court, there are no unique considerations. The issue instead is only one of federal court jurisdiction over plans enacted by the state's redistricting process. This is the situation in Minnesota.

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[2]See, e.g., ILL. CONST. art. IV, § 3(b) (state court selects individuals on commission); N.J. CONST. art. 4, § 3 (contingent right of state court to appoint member of redistricting commission); PA. CONST. art. II, § 17 (same).

[3]See, e.g., ALASKA CONST. art. VI, § 11; LA. CONST. art. III, § 6(b) (state court has reapportionment responsibility if legislature fails to reapportion); ME. CONST. art. XXI, § 1571-A(3) (same); S.D. CONST. art. III, § 5 (same).

The issue of the existence of federal court authority and any concomitant impacts on state court authority over redistricting disputes has been and will be addressed fully by the parties. Indeed, appellants devote over eight pages of their brief to this point. See Brief of Appellants at 14-22.

Amici's second and third purported justifications for their brief both relate to the existence of other state redistricting cases. Appellants already have noted the pendency of these other cases and have in fact provided a table listing many of the decisions cited by amici. See Brief of Appellants at 22 n.17; A-391 to A-392. Furthermore, the cases that amici cite are not discussed in any meaningful way in the Amici Brief. See Amici Brief at 3-4, 7, 8 n.3. Amici have not substantively argued their second and third points at all.

By their fourth point, amici contend that Members of the California Democratic Congressional Delegation v. Eu, No. C-91-3383 (N.D. Cal. March 3, 1992), and its reference to Younger v. Harris, 401 U.S. 37 (1970), will not be "pursued" by appellants and that the Amici Brief discussing these cases is therefore merited.

However, appellants have noted both the Eu and Younger cases. See Brief of Appellants at 15 n.9, 16, 20 n.13, 22 n.17. Appellants have also described the Younger abstention doctrine. See id. at 15 n.9. Appellants have in fact quoted the unpublished Eu opinion's reference to Younger. See id. at 16. Amici propose only duplicative argument on this issue.

The Amici Brief adds nothing new to the Brief of Appellants. The simple fact is that the amici, as is evident from their own argument summary, raise only two issues. See Amici Brief at 5. First, amici contend that the federal court violated Germano and abstention principles when it acted. See id. Second,

amici argue that the federal court failed to give the proper preclusive effect to the state court's legislative redistricting plan under the Full Faith and Credit Act, 28 U.S.C. § 1738. See id. Amici's proposed brief argues only these two issues, at one point going so far as to adopt appellants' brief. See id. at 6-14.

These two precise issues, abstention and preclusive effect, are the first two questions set forth on the first page of appellants' brief, see Brief of Appellants at i, and they are the entire first half of appellants' merits argument, see id. at 14-29. The Amici Brief is wholly duplicative of briefs already presented to this Court. The motion for leave to file the Amici Brief should be denied.

Dated: June 11, 1992.

Respectfully submitted,

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